



UNITED NATIONS
DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
STATISTICS DIVISION

**Meeting of the Technical Subgroup on
Movement of Natural Persons – Mode 4
Paris, 31 January -1 February 2005**

BACKGROUND NOTE ON GATS MODE 4 AND ITS INFORMATION NEEDS

World Trade Organization and OECD

1. The UN Technical Subgroup on the measurement of the movement of natural persons is working on the creation of a new statistical domain which aims at providing a complete and broad set of statistics covering the activities of natural persons moving across borders. This domain will encompass, for example, natural persons engaged in the provision of goods and services, employees of international organisations, students, pensioners, etc, drawing together information on the total number of persons crossing borders, remittances and net worth, in order to respond to a wide range of information needs.

2. This paper, by contrast, is aimed at a narrower sub-set of that larger picture: those categories of natural persons which would fall under GATS mode 4 – the supply of services via movement of natural persons. This paper sets out the scope of GATS mode 4 to assist in the separate identification of the data necessary to assess this trade within the much broader framework being developed by the sub-group. Part I provides a short general introduction to the GATS. Part II elaborates on the definition of GATS mode 4 and the broader definition used by some groups. Part III undertakes a preliminary identification of the main information needs from a statistical point of view. A number of relevant GATS provisions and related documents, as well as a brief note on the treatment of mode 4 under regional trade agreements, are attached as Annexes.

Part I. Short introduction to the GATS and modes of supply

3. One of the most important outcomes of the Uruguay Round of trade negotiations was the integration of services into the multilateral trading system. The General Agreement on Trade in Services (GATS) entered into force on 1 January 1995.

4. The GATS is a multilaterally agreed legal framework for trade in services which provides a system of predictable and enforceable conditions ("binding commitments") for services trade, applying to all Members of WTO. It has three main objectives:

- To progressively liberalize trade in services through rounds of negotiations;
- To encourage economic growth and development through liberalization of trade in services ; and
- To increase participation of developing countries in world trade in services.

5. The GATS applies to measures affecting trade in services taken by governments at whatever level (central, regional or local) or by non-governmental bodies in the exercise of powers delegated by governments. The GATS consists of three main pillars:

- A set of general obligations and disciplines which apply to all WTO Members, e.g. the Most Favoured Nation (MFN) treatment (a Member shall treat all other Members in the same way as it treats its most favoured partners) or some transparency requirements (make publicly available at national level all relevant measures related to trade in services covered by the agreement);
- Schedules of specific commitments.¹ Unlike goods, access conditions are not determined by tariffs, but by regulations, quotas etc. Each WTO Member's commitments are laid down in the schedules of specific commitments, which show the services sectors and modes of supply

¹ GATS commitments are guaranteed minimum treatment offered to other WTO Members; countries are always free to offer better treatment if they wish, but they cannot offer worse. Commitments are binding – that is, they cannot be changed without paying compensation to other Members (this takes the form of a commitment in another area of equal value to the one being changed or withdrawn).

in which foreign services and/or suppliers will be permitted and under which conditions, i.e. market access and national treatment²;

- Annexes on specific sectors (e.g. air transport services, financial services, movement of natural persons).

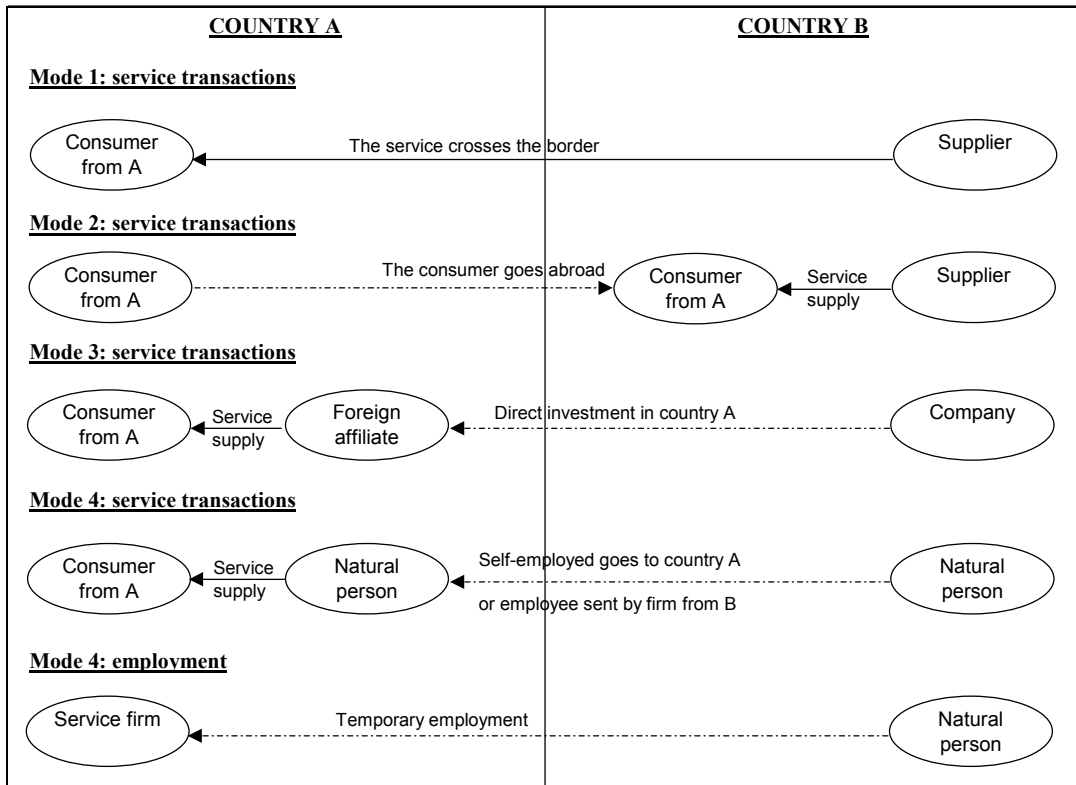
6. The Agreement covers all services except air traffic rights and directly related measures which are subject to bilateral agreements (this exclusion is subject to periodic review), and services provided under governmental authority (i.e. services supplied neither on a commercial basis nor in competition with one or more service suppliers). For making commitments by sector the WTO Secretariat's negotiating list, the Services Sectoral Classification GNS/W/120 (July 1991), may be used (see Annex 1).³ Each sector contained in the WTO Secretariat list is identified by corresponding codes of the Central Product Classification (CPC), provisional version. Where it is necessary to refine further a sectoral classification, this is done on the basis of the CPC or other internationally recognised classification (e.g. Financial Services Annex). The correspondence with the CPC provisional version is only made to assist in defining GNS/W/120.

7. Depending on the location of the supplier and the consumer, GATS defines four modes of supply (see Chart 1). In addition to the cross-border supply (mode 1), where both the supplier and the consumer remain in their respective home territories (which would correspond to the traditional notion of trade), GATS also covers cases where consumers move outside their home territory to consume services (mode 2 – consumption abroad), or cases where service suppliers move to the territory of the consumers to provide their services, whether by establishing affiliates through direct investment abroad (mode 3 – commercial presence), or through the presence of natural persons (mode 4).

² Market access provisions of GATS cover six types of limitations or restrictions: number of service suppliers, total value of services transactions, number of services operations or quantity of output, total number of natural persons, specific types of legal entity or joint venture, participation of foreign capital etc. National treatment limitations refer to the fact that a "national" service or service supplier is given a more favourable treatment than a like foreign service or service supplier (e.g. nationality or residency requirements, discriminatory subsidies etc.)

³ Members may also use any other way of defining the service sectors for which they want to make commitments (e.g. national classifications, sector specific classifications)

Chart 1. Synthetic view of modes of supply



Source: Manual on Statistics of International Trade in Services, Statistical Papers, Series M, No. 86, United Nations

Part II: Defining GATS mode 4 and the supply of services through the movement of natural persons

II.1 Definition of GATS mode 4

8. GATS Article I 2. (d) defines mode 4 as the supply of a service by "... a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member"(see Annex 2). The purpose of stay in the territory of the Member is to supply a service. When the service has been supplied the natural person leaves the country.

9. The GATS Annex on the Movement of Natural Persons supplying Services under the Agreement (see Annex 3) specifies that the GATS does not apply "to measures affecting natural persons seeking access to the employment market" nor does it apply "to measures regarding citizenship, residence or employment on a permanent basis". In addition the Annex provides for the possibility that commitments, and therefore access conditions, be scheduled by categories of natural persons, which introduces an element of flexibility. The Annex also clarifies that regardless of their obligations under the Agreement, Members may regulate the entry of natural persons and their temporary stay in their territory. This includes regulation through measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

What is a natural person?

10. A natural person of a Member is defined in GATS Article XXVIII(k) as a national of that Member or a natural person which has a right to permanent residence in that Member (see Annex 4). The latter is only covered when the Member concerned does not have nationals or, subject to additional qualifications in its acceptance to the GATS, accords substantially the same treatment to permanent residents as to nationals in respect of measures affecting trade in services.⁴

What is the supply of a service?

11. It is not always easy to define what a service actually refers to and this issue is not only limited to the 4th mode of supply. For instance, should a fruit-picker be seen as a person supplying services incidental to agriculture (fruit picking services) or as an agricultural worker? This of course depends on how Members define the GNS/W/120 category "Services incidental to agriculture, hunting and forestry". The same applies to other categories of the breakdown of item "Other business services" of the GNS/W/120 such as services incidental to mining, manufacturing etc.

12. Equally, while it is clear that services supplied under governmental authority are not covered by the GATS, there is some debate about what exactly falls under this carve out as in a number of specific cases it may be difficult to distinguish between these and other services, especially given the increasing use of a range of public and private sector partnerships in service provision.

Which skill levels are covered?

13. From the GATS text, it is possible to state that mode 4 includes service suppliers at all skill levels. In practice WTO Members' current commitments (see Annex 5) are generally limited to the high skilled natural persons (managers, executives, specialists - although these terms are generally not

⁴ Only a few countries have made such a notification.

further defined). However, given the scope of the agreement, persons at all skill levels should be included in this framework.

What is temporary?

14. Mode 4 covers natural persons providing services on a "temporary" or non-permanent basis. Further clarification may be required on the issue of "temporary". "Temporary" is not defined in the GATS, but permanent migration (residence, citizenship or employment on a permanent basis) is clearly excluded. Furthermore persons seeking access to the employment market (i.e. job seekers) are excluded. For the purposes of specific commitments WTO Members have in general indicated the temporary nature of the presence of natural persons ("entry and temporary stay"). However many Members have not always indicated the duration of stay which is being guaranteed under their specific commitment.⁵ In practice, WTO Members have indicated a duration of stay in their specific commitments and have done so distinguishing between the categories of natural persons considered (ranging from a few months to several years, see part II.3 What is covered by WTO Member's commitments).

Which categories of entrants are covered?

15. When defining Member A as the country of the service supplier and Member B as the country of the service consumer, from the GATS main text it is clear that the following natural persons are covered:

- Self employed of Member A entering the territory of Member B in respect of the supply of a service;
- Employee (who is a natural person of a Member) of a service supplier of Member A:
 - the employee is sent to Member B in respect of the supply of a service; or
 - the service supplier of Member A has commercial presence in Member B and sends its employee to its affiliate in Member B.

16. These categories, which are directly derived from the agreement, refer to what could be defined as the "GATS definition of mode 4". They encompass self-employed or independent service suppliers (remuneration received in host country); employees of a foreign company who are sent to fulfill a contract with a host country client; employees of foreign companies established in the host country (intra-corporate transferees) and business visitors (short term stays, no remuneration received in host country).

⁵ Note that the in the "Guidelines for the scheduling of specific commitments under the General Agreement on Trade in Services" (S/L/92), which was adopted by the WTO Council on Trade in Service on 23 March 2001, Members are encouraged to include in their commitments the duration of temporary stay of natural persons for the purpose of supplying a service. In the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, it could be understood that no binding is being undertaken in respect of the duration of that stay.

Summary of the coverage of mode 4

17. The table below provides a summary of what and who is covered by GATS mode 4, what is excluded and identifies the areas where it may be difficult to define the coverage with respect to the supply of services under mode 4.

Table 1: Summary of GATS mode 4 coverage

	Included	Excluded	Borderline
Duration of stay	Temporary presence	Permanent migration (GATS does not apply to measures affecting residence, citizenship or employment on a permanent basis)	Temporary is undefined
Purpose of stay	Presence of natural persons for the supply of commercial services	Persons seeking to access the employment market Natural persons working in non-service sectors – e.g., agriculture, manufacturing Services supplied under governmental authority	Scope of certain sectors, e.g. “services incidental to agriculture, hunting and forestry” (e.g. agricultural workers or suppliers of fruit-picking services?) etc. Lack of certainty over precisely what would fall under the carve out for “services in the exercise of governmental authority” (e.g. education or health services)
Skill level	All skill levels included		
Categories of natural persons	Business visitors Contractual service suppliers (self-employed or as employee of a foreign service supplier) Intra-corporate transferees (foreign employees of foreign companies established in the host country)	Employees of all domestic companies –locally-owned – established in the host country	

II.2 A "broader" approach to the supply of services through the movement of natural persons

18. There is debate amongst WTO Members and also between a number of experts about whether natural persons from Member A (the sending territory) employed by a service firm of Member B (the receiving territory) -- not-owned or controlled by Member A -- should also be covered by GATS mode 4. This debate is based on the text of the GATS Annex on Movement of Natural Person Supplying Services under the Agreement. The Annex applies to "measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service". The first category is clear - "natural persons who are service suppliers of a Member" covers self-employed or independent service suppliers who obtain their remuneration directly from customers (covered by the GATS definition above). However, there is some debate about who is covered by the second category ("natural persons of a Member who are employed by a service supplier of a Member").

19. The WTO Secretariat background note on mode 4 ("Presence of natural persons (mode 4), Background note by the WTO Secretariat", S/C/W/75, 1998) has noted that this wording could be read to suggest that foreigners employed by host country service companies (locally-owned) are also included under mode 4. However, as GATS Article I.2(d) seems to cover only foreign employees of foreign firms established in another Member, the Secretariat background note suggests that foreigners working for host country companies would fall under GATS mode 4 if they worked on a contractual basis as independent suppliers for a locally-owned firm, but would not necessarily seem to be covered if they were employees of that firm.

Box 1. The difference between employment contracts and service contracts :

Law in several OECD countries* defines the employment contract using the following criteria: a) remuneration that does not depend on profits; b) work under supervision or strict guidelines; c) use of capital equipment, information services, or premises of others; d) presence of a link of subordination between the employee and the employer, (i.e. the employer organises, controls the work and sets the working hours

The distinction between employment contracts and services contracts is usually made using the fourth criteria: In certain cases, the courts of justice have to question the existence of an employment contract between two parties before being able to state on the application of an employment regulation. This can be the case with service contractors that habitually provide their services to the same business.

The existence or not of an employment contract will depend on the existence of the link of subordination, consequently the court will look for organisation constraints, for the presence of controls and at the definition of working hours. This will have important consequences : i.e. application or not of the employment legislation in case of dismissal, industrial injuries, existence of paid vacations, affiliation to the social security and payment of the relevant contributions.

*In countries such as France, Portugal, Greece or Canada. See also the ICSE 93 for the distinction between employment contracts (i.e. for 'employees') and self-employment contracts (i.e. for 'service providers') with the main emphasis placed on 'economic risks' and 'authority'. <http://www.ilo.org/public/english/bureau/stat/class/icse.htm>.

20. However, others argue that, notwithstanding this, foreign employees of domestic companies should be included. First, they point to the fact that a number of WTO Members have clearly referred to short-term employment in their schedules of specific commitments. Second, they note that a number of WTO Members also consider all foreign temporary workers, even those supplying services

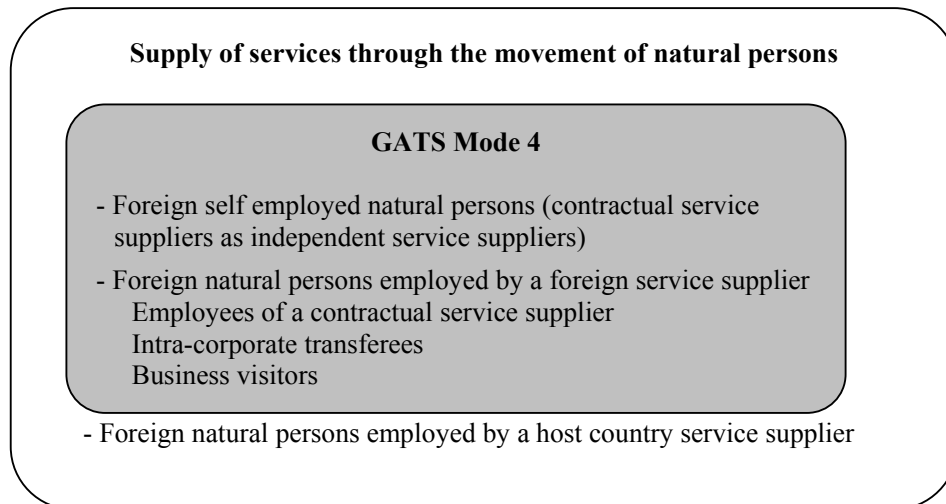
on a contractual basis, to be employees for the purposes of bringing them under domestic labour law. This complicates efforts to separately identify individual contractual service suppliers from employees (see box 1. for a discussion on the difference between employment and service contracts).

21. Similarly, some commentators have also queried the GATS' distinction between service providers and persons entering the labour market in a country. They argue that, given that temporary entry under GATS commitments can last for up to 3 years (or in some cases longer), the service provider has in effect entered the local labour market, even though they are not applying for citizenship, as they are providing a service which a local person could probably do [Young, 2000].

22. Against this backdrop, and given the interest in foreign natural persons employed by host country service suppliers, it seems necessary to include these in the statistical framework – that is, to adopt a "broad" approach to the supply of services through the movement of natural persons. That is, we should also include foreign natural persons who have a service occupation and are employed by a host country firm engaged in any activity (i.e. goods or services producing activities). Of course, it is still highly desirable to be able to separately identify – to the extent possible - each category of natural persons (i.e., employees of host country companies, etc.) in order to cover information needs with respect to both the GATS mode 4 definition and the broad approach of the supply of services through the movement of natural persons.

23. Chart 2 summarizes the different categories of natural persons which should be covered when looking at the GATS mode 4 definition and the broader approach covering all supplies of services through the movement of natural persons.

Chart 2. GATS mode 4 and broader approach of the supply of services through the movement of natural persons (from the point of view of the receiving country)



II.3 What is covered by WTO Members' commitments?

24. WTO Members' commitments are usually based on functional criteria of the type of person involved (executive, manager, specialist) and/or the purpose of the presence (supply a service, establish business contacts, negotiate sales, set up commercial presence). WTO Members' commitments generally refer to the following categories of natural persons and Members which have indicated a duration of stay have done so distinguishing between these categories:

- contractual service suppliers – independent service suppliers and employees of foreign juridical persons (duration of generally 3 months to one year, rarely more than 2 years);
- business visitors self-employed or employed by the service supplier for the purpose of establishment of commercial presence or sales negotiations (short-term stays, often limited to 3 months); and
- intra-corporate transferees of service suppliers. Duration of stay is generally limited to 2-5 years. A majority of commitments for intra-corporate transferees actually specify a duration of stay of more than 3 years or have not specified a time limit

25. A number of Member countries have included separate categories such as installers and servicers, artists, sportsmen or sportswomen or other suppliers of services taking part in public performances etc. However for simplification reasons, in the statistical framework, these categories may be seen as falling under one of the three above categories (e.g., installers and servicers as contractual service suppliers or intra-corporate transferees, artists as contractual service suppliers, etc.)

26. Further information with respect to these categories is at Annex 5 which presents a summary of descriptions of all categories included in WTO Members' schedules of commitments).

27. In terms of the coverage under the framework of other categories, border workers (e.g. an independent service supplier crossing the border every day for the purpose of work) should also be considered insofar as they fall under the GATS (i.e. they are service suppliers) or fall under the broader definition (i.e., they are foreign employees of domestic firms rather than contractual service suppliers). Graduate trainees may also be included, as for instance they could be included in the category of intra-corporate transferees (a number of countries currently mention graduate trainees in their schedules of specific commitments).

28. Finally, it should be noted that regional trade agreements can go beyond the categories of persons covered by GATS mode 4, or even the broader definition outlined above. While some agreements only cover movement in relation to the services chapter and mode 4, others - while still focused on trade-related movement - are no longer limited simply to trade in services, but can include investors and businesspeople from other sectors (e.g., manufacturing) (see Annex 6).

Part III. Information needs

29. Table 2 below was built to identify and map the different statistics needed from a trade perspective to assess the supply of services through the movement of natural persons (GATS mode 4 and the broad approach) from the viewpoint of the recipient/importing country. This table presents what ideally would be needed in terms of information. A similar table will have to be derived for the sending/exporting country.

30. With respect to the information needs, two types of statistics were identified in order to assess mode 4 and more broadly the supply of services through the movement of natural persons from the trade perspective: the **value** of the service provided and the **number of natural persons** moving abroad to supply a services.⁶

31. Two populations are presented in order to cover all information needs of users of the statistics with respect to the supply of service through the movement of natural persons:

- the first considers mode 4 as defined in the GATS (i.e. foreign contractual service suppliers either self-employed or employees of juridical persons, intra-corporate transferees and business visitors) which correspond to what is stated in the text of the agreement; and
- the second which corresponds to the broader approach (foreign employees of host country firms supplying services in addition to the above "GATS population").

32. Table 2 also suggests additional information that could be collected with respect to the (service related) occupation of foreign employees of host country firms engaged in any activity (goods or services) as this may be used in order to cover information needs linked to the employment related commitments which are made by a number of Member countries (the difference with the independent service suppliers stands in the terms of the contract: a number of countries have stated in their schedules that these natural persons should be employed by the host country firm in order to supply the service).

Categories of persons

33. The categories of natural persons used (contractual service suppliers- independent service suppliers and employees of juridical persons, Intra-corporate transferees and Business visitors) do not necessarily correspond to the categories identified in WTO Members' schedules of commitments, but are used as major groups of natural persons that could be used in the statistical framework. Other categories such as graduate trainees, installers and servicers, personalities of international recognized reputation, etc. are seen as sub-categories falling under one of the three/four major groups identified.

Country of origin

34. In terms of bilateral trade (movement) information, it is the country of origin of the service supplier that matters. Therefore for independent service suppliers or self-employed business visitors it is the citizenship of the natural persons (or the territory of permanent residence for countries which accord the same treatment to residents as they do to nationals in respect to the supply of a service) that should be considered. The country of citizenship of the juridical person should be identified for the following categories of natural persons: Contractual service suppliers – employees of juridical

⁶ The statistics identified/suggested here correspond to an extension to the areas identified as sources in the paper "GATS, modes of supply and the Manual on Statistics of International Trade in Services" (2003, Guy Karsenty, ECE-Eurostat joint meeting on migration statistics). They are used to provide an indication of where information may be found.

persons, Business visitors employed by a juridical person and Intra-corporate transferees. However it may also be interesting to obtain information according to the citizenship of the natural persons. For foreign employees of host country firms (not linked to mode 3) it is the citizenship of the natural person that would be of interest.

Duration of stay

35. There is no standard upper limit for the duration of stay. The durations indicated in Table 2 correspond to a summary of what WTO Members have indicated in their commitments. Depending on the category of natural person the existing statistical area which will include the relevant information will differ as the inclusion or exclusion in statistics often depends on a "one-year rule". In addition, commitments made by Members are actually a minimum that they guarantee to their partners. In reality, Members may be more liberal than what they have committed.

36. At this stage, it seems that the best way to proceed is to focus on the categories of natural persons without any limit in the duration of stay, and then try to identify a breakdown into more specific time periods. A one year guideline could probably still be useful; however a number of commitments, especially for contractual service suppliers and business visitors refer to short-term stays of less than three months which may be very difficult to capture in some areas (e.g. business visitors).

III.1 Measuring the value of services supplied

37. For the estimation of the value of services supplied through mode 4, the treatment will differ depending on the category of natural persons considered:

- Contractual service suppliers: The value of the service supplied in the context of the service contract may be estimated through the service transactions between residents and non-residents in the balance of payments current account (based on the recommendations of the 5th edition of the IMF's Balance of Payments Manual - BPM5). Balance of payments statistics include transactions relating to services supplied domestically by foreign natural persons, and are thus relevant to mode 4. However in many cases a single service transaction may cover more than one mode of supply and for a number of service categories the mode 4 component is believed to be relatively marginal, but ideally it would be of interest to identify this component separately.

The following BPM5 services categories where the supply through the presence of a foreign natural person is believed to possibly be an important component, are particularly relevant for measuring mode 4: computer and information services, other business services, personal, cultural, and recreational services, and construction services.⁷ As stated above, these mode 4 related categories cover, indistinguishably, transactions related to other modes of supply: mode 1 (cross-border supply) for computer and information services, other business services, personal, cultural, and recreational services, and mode 3 (commercial presence) for construction services, which may be indeed statistically more significant in many cases.

The Manual on Statistics of International Trade in Services proposes a simplified approach as a starting-point to extract trade values by modes of supply. The merit of such an approach is more to enlighten the relationship between modes of supply and services categories than to allow their full allocation. It would therefore be useful to conduct case studies and pilot

⁷ It should be noted that these categories do not readily correspond with those used by many WTO Members for the purposes of making commitments under Mode 4 (see Annex 1) and that the types of services which may be provided through mode 4 are not limited to the BPM5 categories listed in this document.

projects in order to have a clearer idea of the importance of the different modes of supply which are considered in the balance of payments services transactions.

Statistics referring to the supply of services by contractual service suppliers should be broken down by type of service supplied (i.e. according to the Extended Balance of Payments Services Classification - EBOPS). Information broken down by category of natural persons (self-employed and employee of a foreign service supplier) would of course also be of interest. For independent service suppliers the border line between a service contract and an employment contract may be difficult to define, especially in the case of the supply of a service that necessitates a relatively long stay (e.g. one year). This could probably lead to a misallocation of information to the balance of payments item compensation of employees instead of services transactions.

- Business visitors: These natural persons are actually not engaged in the supply of a service. They are visiting the host country on behalf of the company they are representing in order to negotiate a service contract or to establish a commercial presence. The presence of these natural persons is linked to the supply of a service but they are not supplying the service themselves. The supply of the service to the consumer actually takes place under the other modes of supply (it may be supplied through mode 4 if that is what the business visitor has negotiated in the sales contract, but it is not his visit that is the actual supply).
- Intra-corporate transferees: The movement of these natural persons takes place in relation with services supplied through mode 3 commercial presence – that is, for the purposes of the GATS, it is actually the juridical person which is the service supplier. Hence the value of the service supplied will appear under Foreign Affiliates Trade in Services (FATS) statistics as the service is supplied by the service supplier through mode 3.

Given the inclusion of intra-corporate transferees under mode 4, it might still be interesting to have some sense of the contribution of these individuals to the value of the service supplied. Figures for the compensation of employees of these natural persons (which could be derived from FATS statistics) could provide a very rough proxy for this (see also foreign natural persons employed by host country service suppliers below). Knowing the compensation of these natural persons would also allow to subtract them from the total compensation of employees – which should enable us to separately identify foreign natural persons working for home country companies (responding to the broad approach needs).

- Foreign natural persons employed by a host country service supplier: as stated above, this category of natural person is considered in the broader approach with respect to the supply of services through the movement of natural persons. As for intra-corporate transferees, it is the service supplied by the firm that is of interest in terms of the value of the trade. However, similar to the case of intra-corporate transferees, to approximate the value of the service supplied by this firm through the presence (employment) of the natural person one could consider the compensation received for the work performed. Looking at existing statistics, this information could be derived (with adjustments, i.e. more than one year, service producing companies, etc.) from the balance of payments item "Compensation of employees". The compensation paid to foreign natural persons by service producing firms should be identified, excluding compensation received by employees of international organisations and by intra-corporate transferees (see above), identify separately border workers etc.

III.2 Measuring the number of natural persons

38. In the same way as for the value of the service supplied, the treatment will differ depending on the category of natural persons considered. Much depends on the treatment of the duration of stay: migration/employment statistics for stays of more than one year and tourism statistics for lengths of less than 12 months? For example, *business visitors* can be subject to a separate visa category, but can also be hidden under tourist visas, although some countries have “GATS” or “service seller” visas

which roughly correspond to this category. *Intra-corporate transferees* are also covered by special visa categories in some OECD countries and industry surveys can also be a useful source, as can the FATS statistical framework. *Foreign employees of foreign established companies* – could appear under intra-corporate transferee visas, while *foreign employees of host country companies* could appear under temporary entry employment visas. Where these require company-specific sponsorship, it may be possible to determine whether the company concerned is engaged in the supply of services. Information about the type of work contract may be relevant (e.g., those foreigners providing services on a contract basis versus those who are employees).

39. Migration statistics (visa and work permits) in a number of countries provide useful information on temporary foreign workers. Work permits can be useful, depending upon the extent to which mode 4 type workers can be identified separately from workers seeking to enter the labour market (making this distinction may require the combined use of visa and work permit information). Work permits and visas indicate the country of origin of the worker and may indicate the economic sector, but information on occupation or educational level tends to be less frequent. However, where work permit systems are geared towards identifying higher skilled persons, information on occupation and education may be more readily available. While information on the type of contract may be collected as part of some visa or work permit schemes (where it is relevant to the criteria for a given category), this is unlikely to generally be the case. In general, such information is likely to be difficult to both obtain and interpret. Some of the issues in using migration statistics include:

- Migration categories generally do not distinguish between service and non-service activities.
- It is not always possible to judge whether the activities covered by some visa categories are commercial and would qualify as the supply of a service under the GATS (for example, occupational trainees, professional exchange programs).
- Some visa categories include persons both consuming and supplying services (for example, exchange visitors encompass exchange students and visiting lecturers).
- In some countries, numbers for foreign temporary entrants may also include family members.
- Some movements are not recorded by visa and work permit registrations - e.g., for those nationalities which benefit from regional or bilateral agreements (e.g., within the EU or between the Nordic countries or Australia and New Zealand).
- Information not just on the types of visa issued, but on the number of actual arrivals for those visa categories would be useful; however, not all countries collect this.
- However, a number of countries lack special visa categories for short-term business visitors and similar categories of particular interest to mode 4. In some countries, the choice can be between tourist and permanent migration visas - service providers in such countries often enter as tourists.

40. Valuable information on mode 4 trade can sometimes be found at the industry level. Some professions - such as accountancy, architecture, consultancy, engineering, law and nursing - have become increasingly good sources - at least in some countries - of data on mode 4 trade. Companies in these sectors have often collected extensive data on the number of people moving in the sector, to which countries, for what purpose and for how long. For example, a study undertaken on legal services in the UK by International Financial Services London [2003] provide relatively detailed information on the number of foreign lawyers working in the UK. PricewaterhouseCoopers has also undertaken a survey of how 271 companies from 24 countries organise their international

assignments.⁸ Another useful source of information, especially at the sector-specific level, could be recruitment firms. In some sectors such firms are already being closely monitored in terms of recruitment of temporary workers.

III.3. Data broken down by type of occupation / skills

41. A number of Members' commitments refer to certain types of occupations (or skills) of natural persons such as managers, executives, specialists (please note that occupations/skills may not exclusively be limited to the ones listed here). It may therefore be useful to also obtain more generally information by type of occupation, derived using for instance the ILO International Standard Classification of Occupations (ISCO-88). An issue remains: should the statistics provide a proper breakdown of skills or will this be inherently covered by the breakdown by type of occupation as ISCO-88 breakdowns are built according to skill level and skill specialization: based on the International Standard Classification of Education (ISCED), in ISCO-88 occupations are classified according to four skill levels.

42. Finally, as stated above, additional information would also be of use on the service occupation of the employees of host country firms (excluding intra-corporate transferees) engaged in both goods and services activities as a number of Members' commitments have explicitly related to short-term employment with respect to the supply of a service by the presence of a foreign natural person in a host country firm. They would actually be an overlap with the category of foreign natural persons employed by a host country service suppliers as in this the scope of this additional information we would be considering foreign natural persons who have a service occupation and are employed by a host country firm engaged in any activity (i.e. goods or services producing activities).

8. See PricewaterhouseCoopers, 2001; a previous survey was undertaken in 1997. PricewaterhouseCoopers is also greatly improving its in-house collection of data related to movement of people within the company. As a professional services company, employing 160 000 people in 150 countries, the company has, at any one time, 5 000 employees working outside their home country. The company is now systematically collecting monthly figures on inbound and outbound assignees in different areas of its operations.

Table 2. The supply of services through the movement of natural persons: Information needs of a receiving/importing country

Coverage	Type of contract	Category of natural persons	Territory of origin (citizenship)	Length of stay (summary)	Sectoral breakdowns	Information needs		
						Value of service	Number of natural persons	
BROAD	GATS mode 4	I. Service contracts, delivered in the host country	Contractual service suppliers: <ul style="list-style-type: none"> ➤ Independent service suppliers ➤ Employees of foreign service supplier 	<ul style="list-style-type: none"> ➤ Natural person (or permanent residence) ➤ Juridical person 	3 months – 1 year (rarely more than 2)	Service produced Occupation of natural person	Balance of payments services transactions between residents and non-residents, major services components (case studies, pilot projects?) To what extent these transactions will not fall under compensation of employees (considered below)?	Migration/employment or tourism statistics
		II. Employment contracts with foreign (service producing) firms which have commercial presence in the host country	Intra-corporate transferees	Juridical person	> 2 years and < 5 years (or more)	Service produced by juridical person Occupation of natural person	No (supply through mode 3) Compensation of employees (from FATS statistics) could be of interest (see below)	FATS employment statistics Migration statistics
		III. Self employed or employed with foreign service producing firm but service is not actually supplied in host country	Business visitors <ul style="list-style-type: none"> ➤ for establishment of commercial presence ➤ for sales negotiations 	Juridical person; or natural person (or permanent residence) in the case of self-employed	<3 months	Service produced by juridical person (or natural person in the case of self-employed) Occupation of natural person	No (no service is supplied)	Tourism statistics or migration statistics
	IV. Employment contracts in host country (service producing) firms (excluding intra-corporate transferees)	Employees of host service producing firms	Natural person (or permanent residence)	Need to define as may vary between Members Norway: 3 months out of 12 USA H1(b): up to 3 years	Service produced by juridical person Occupation of natural person	Compensation of employees for natural persons who are employed by service producing firms (excluding employees of international organisations (IOs), exclude intra-corporate transferees, identify separately border workers)	Migration/employment or tourism statistics: short-term migrants employees.	
Additional information	Employment contracts in host country firms (excluding intra-corporate transferees)	Employees engaged in service occupations of host country firms.	Natural person (or permanent residence)	Norway: 3 months out of 12 USA H1(b): up to 3 years	Service occupation of natural person	Compensation of employees for natural persons who have service occupations (excluding employees of IOs, exclude intra-corporate transferees, identify separately border workers)	Migration/employment or tourism statistics: short-term migrants employees.	

Annex 1. WTO Services Sectoral Classification List – MTN.GNS/W/120

<u>SECTORS AND SUB-SECTORS</u>		<u>CORRESPONDING CPC</u>
1.	<u>BUSINESS SERVICES</u>	<u>Section B</u>
A.	<u>Professional Services</u>	
a.	Legal Services	
b.	Accounting, auditing and bookkeeping services	862
c.	Taxation Services	863
d.	Architectural services	8671
e.	Engineering services	8672
f.	Integrated engineering services	8673
g.	Urban planning and landscape architectural services	8674
h.	Medical and dental services	9312
i.	Veterinary services	932
j.	Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k.	Other	
B.	<u>Computer and Related Services</u>	
a.	Consultancy services related to the installation of computer hardware	841
b.	Software implementation services	842
c.	Data processing services	843
d.	Data base services	844
e.	Other	845+849
C.	<u>Research and Development Services</u>	
a.	R&D services on natural sciences	851
b.	R&D services on social sciences and humanities	852
c.	Interdisciplinary R&D services	853
D.	<u>Real Estate Services</u>	
a.	Involving own or leased property	821
b.	On a fee or contract basis	822
E.	<u>Rental/Leasing Services without Operators</u>	
a.	Relating to ships	83103
b.	Relating to aircraft	83104
c.	Relating to other transport equipment	83101+83102+
d.	Relating to other machinery and equipment	83106-83109
e.	Other	832
F.	<u>Other Business Services</u>	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676

f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing	884+885 (except for 88442)
j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*
t.	Other	8790
2.	<u>COMMUNICATION SERVICES</u>	
A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.
n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	

The () indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

D.	<u>Audiovisual services</u>	
a.	Motion picture and video tape production and distribution services	9611
b.	Motion picture projection service	9612
c.	Radio and television services	9613
d.	Radio and television transmission services	7524
e.	Sound recording	n.a.
f.	Other	
E.	<u>Other</u>	
3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	511+515+518
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632 6111+6113+6121
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	
5.	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u>	923
D.	<u>Adult education</u>	924
E.	<u>Other education services</u>	929
6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401

B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
D.	<u>Other</u>	
7.	<u>FINANCIAL SERVICES</u>	
A.	<u>All insurance and insurance-related services</u>	812**
a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	<u>Banking and other financial services</u> (excl. insurance)	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
	- other negotiable instruments and financial assets, incl. bullion	81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h.	Money broking	81339**
i.	Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119+** 81323*
j.	Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments	81339** or 81319**
k.	Advisory and other auxiliary financial	8131

	services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	or	8133
I.	Provision and transfer of financial information, and financial data processing and related software by providers of other financial services		8131
C.	<u>Other</u>		
8.	<u>HEALTH RELATED AND SOCIAL SERVICES</u> (other than those listed under 1.A.h-j.)		
A.	<u>Hospital services</u>		9311
B.	<u>Other Human Health Services</u>		9319 (other than 93191)
C.	<u>Social Services</u>		933
D.	<u>Other</u>		
9.	<u>TOURISM AND TRAVEL RELATED SERVICES</u>		
A.	<u>Hotels and restaurants (incl. catering)</u>		641-643
B.	<u>Travel agencies and tour operators services</u>		7471
C.	<u>Tourist guides services</u>		7472
D.	<u>Other</u>		
10.	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)		
A.	<u>Entertainment services</u> (including theatre, live bands and circus services)		9619
B.	<u>News agency services</u>		962
C.	<u>Libraries, archives, museums and other cultural services</u>		963
D.	<u>Sporting and other recreational services</u>		964
E.	<u>Other</u>		
11.	<u>TRANSPORT SERVICES</u>		
A.	<u>Maritime Transport Services</u>		
a.	Passenger transportation		7211

b.	Freight transportation	7212
c.	Rental of vessels with crew	7213
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7214
f.	Supporting services for maritime transport	745**
B.	<u>Internal Waterways Transport</u>	
a.	Passenger transportation	7221
b.	Freight transportation	7222
c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	<u>Air Transport Services</u>	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
D.	<u>Space Transport</u>	733
E.	<u>Rail Transport Services</u>	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	<u>Road Transport Services</u>	
a.	Passenger transportation	7121+7122
b.	Freight transportation	7123
c.	Rental of commercial vehicles with operator	7124
d.	Maintenance and repair of road transport equipment	6112+8867
e.	Supporting services for road transport services	744
G.	<u>Pipeline Transport</u>	
a.	Transportation of fuels	7131
b.	Transportation of other goods	7139
H.	<u>Services auxiliary to all modes of transport</u>	
a.	Cargo-handling services	741
b.	Storage and warehouse services	742
c.	Freight transport agency services	748
d.	Other	749
I.	<u>Other Transport Services</u>	
12.	<u>OTHER SERVICES NOT INCLUDED ELSEWHERE</u> ⁹⁵⁺⁹⁷⁺⁹⁸⁺⁹⁹	

Annex 2. Extract from the General Agreement on Trade in Services

Reproduced below are the Preamble and Part I of the text of the agreement which defines the scope of the agreement as concerns trade in services.

General Agreement on Trade in Services

- *Recognizing* the growing importance of trade in services for the growth and development of the world economy;
- *Wishing* to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries;
- *Desiring* the early achievement of progressively higher levels of liberalisation of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;
- *Recognizing* the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;
- *Desiring* to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;
- *Taking* particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby agree as follows:

Part I: Scope and Definition

Article 1

Scope and Definition 1

1. This Agreement applies to measures by Members affecting trade in services
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - a. from the territory of one Member into the territory of any other Member;
 - b. in the territory of one Member to the service consumer of any other Member;
 - c. by a service supplier of one Member, through commercial presence in the territory of any other Member;

- d. by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
1. For the purposes of this Agreement:
- a. “measures by Members” means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- b. “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- c. “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Annex 3. GATS Annex on Movement of Natural Persons Supplying Services under the Agreement

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.⁹

⁹ The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Annex 4. Definition of natural and juridical person in the GATS

GATS Article XXVIII

- (j) "person" means either a natural person or a juridical person;
- (k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
 - (i) is a national of that other Member; or
 - (ii) has the right of permanent residence in that other Member, in the case of a Member which:
 - 1. does not have nationals; or
 - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;
- (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) "juridical person of another Member" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Member; or
 - 2. juridical persons of that other Member identified under subparagraph (i);
- (n) a juridical person is:
 - (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;
 - (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

Annex 5. Summary of descriptions of categories of natural persons in WTO Member's schedules of commitments

A. INTRA-CORPORATE TRANSFEREES (ICT)

1. Close to 60 per cent of the schedules reviewed contain a category referring to intra-corporate transferees (ICTs). About 40 per cent of these ICT entries contain descriptions of three sub-categories - executives (E), managers (M) and specialists (S), and incorporate the common elements listed below. An equal percentage of schedules does not provide definitions for ICTs at all. About 20 per cent of schedules contain descriptions on executives, managers (and other top-level employees) and specialists without explicitly indicating that these commitments refer to ICTs. A small number of schedules combine elements of executives and managers in a category of "senior managerial position."

2. Entries on intra-corporate transferees typically refer to:

- (a) Executives, managers, specialists;
- (b) working within a juridical person/firm/enterprise established in the territory of a WTO Member;
- (c) being temporarily transferred in the context of the supply of a service through commercial presence (either through a branch, subsidiary or affiliate) in the territory of another Member.

1. Executives (E)

- (i) Primarily direct the management of the organization;
- (ii) exercise wide latitude in decision-making;
- (iii) receive only supervision or direction from high-level executives (the board of directors or stockholders);
- (iv) do not directly perform tasks related to the provision of the service(s) of the organization.

2. Managers (M)

- (i) Primarily direct the organization, or department or sub-division of the organization;
- (ii) with supervisory and control function over other supervisory, professional or managerial staff;
- (iii) have authority to hire or dismiss personnel, recommend their hiring or dismissal or take other personnel action;
- (iv) exercise discretionary authority over day-to-day activities.

3. Specialists (S)

- (i) Possess knowledge at an advanced level of expertise (or uncommon knowledge) essential to the establishment or the provision of the service;
- (ii) possess proprietary knowledge of the organization's products, services, research equipment, techniques or management.

B. BUSINESS VISITORS (BV) AND SERVICES SALESPERSONS (SS)

3. About 40 percent of the schedules reviewed use the categories of business visitors (BV), and/or services salespersons (SS). A wide degree of overlap exists between definitions relating to the description of activities carried out by these categories of natural persons. Some schedules use the term 'business visitors' to refer to foreign natural persons seeking entry into another Member's territory for the purpose of setting up a commercial presence, and refer to 'service sellers' as persons seeking entry for the purpose of negotiating for the sale of a service on behalf of an enterprise. Other schedules define these activities in exactly the opposite way. (i.e., they use the category BV to describe sales negotiations and refer to SS to describe the setting up of a commercial presence).

4. A third group of schedules merge the two categories (with some referring to them as BV, and others as SS). Due to this interchangeable use of terms, it appears for the purposes of this Note useful to only describe the activities referred to in the schedules without categorizing these activities under either business visitors or services salespersons. We refer below to the activities of (a) sales negotiations, and (b) setting up of a commercial presence.

2. Sales Negotiations

- (a) Involves persons employed or mandated by an enterprise to conclude the contract for the sale of a service on behalf of enterprise which employs them or mandated them;
- (b) the persons should not be engaged in supplying the service themselves or making direct sales to the general public within the other Member's territory;
- (c) several schedules specify that persons performing these activities do not receive any remuneration from a source located within the host Member.

3. Setting up of a Commercial Presence

- (a) Involves employees of an enterprise not having commercial presence in another Member;
- (b) purpose of the visit is to set up a commercial presence of that enterprise in the territory of another Member;
- (c) representatives are not to engage in direct sales to the public or supply services themselves;
- (d) some schedules also detail that persons performing these activities do not receive any remuneration from a source located within the host Member;
- (e) some schedules specify that such persons occupy a managerial or executive position with the entity which mandates it to conduct such business.

4. Sales Negotiations/Setting up of Commercial Presence - Merged category

5. Some 10% of schedules have combined in one category elements of both activities. Relevant definitions include the following elements:

- (a) Representatives of a service supplier seeking entry and temporary stay for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, and performing similar activities, including attending business meetings;
- (b) representatives will not be engaged in making direct sales to the general public or in supplying services themselves;
- (c) persons working in a senior position within a juridical person, who are responsible for the setting up of a commercial presence of a service supplier of a Member.

C. CONTRACTUAL SERVICE SUPPLIERS (CSS)

6. Some 15% per cent of schedules contain a category of contractual service suppliers. These suppliers are typically described as foreign natural persons supplying the service in the territory of the Member concerned on the basis of a contract that provides the primary justification for granting access. Entries on contractual service suppliers refer to either employees of a foreign-based enterprise or, very rarely, to self-employed/independent service suppliers (usually specified as professionals or specialists with technical expertise).

2. CSS - Employees of Juridical Person

- (a) Engaged in the supply of a service on a temporary basis as employees of a juridical person supplying the service, with no commercial presence in the territory of the Member where the service is to be provided;
- (b) the juridical person has obtained a service contract for a service to be provided in the territory of another Member;
- (c) the employees receive remuneration from their employer while abroad;
- (d) the employees may not engage in other employment in the territory of the Member where the service is to be provided;
- (e) the employees have appropriate educational and professional qualifications relevant to the service to be provided;
- (f) commitment relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Member State concerned;
- (g) commitment applies only to the list of sectors specified by the Member and the employee provides the service as a professional/specialist in the specified sectors.

3. CSS - Independent Professionals

- (a) Normally refers to professionals and specialists carrying out professional or technical activities;

- (b) the natural person supplies the service as a self-employed person and is based in the territory of another Member;
- (c) the natural person has obtained a service contract in the territory of the Member where the service is to be provided;
- (d) appropriate educational and professional qualification relevant to the service to be provided and/or recognized by and registered with professional bodies in the territory of the Member where the service is to be provided;
- (e) commitment relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Member State concerned;
- (f) commitment applies only to the list of sectors specified by the Member.

D. OTHER CATEGORIES INCLUDED IN INDIVIDUAL MEMBERS' SCHEDULES:

- (a) Installers and servicers: covers natural persons who are installers and servicers of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the machinery or equipment mentioned in commitment;
- (b) Graduate trainees: persons with a university degree who are being transferred for career development purposes or to obtain training in business techniques or methods;
- (c) Personalities of internationally recognized reputation: persons invited by higher educational institutions, scientific research institutes or public educational institutions;
- (d) Legal representatives: natural persons occupying a senior position, who have the power to undertake formally obligations in the name of the establishment;
- (e) Personnel of foreign enterprises providing international land, air or water transport under a foreign flag and foreign registration;
- (f) Artists, sportsmen or sportswomen or other suppliers of services taking part in public performances;
- (g) Fashion Models and Specialty Occupations;
- (h) Personnel of public or private enterprises with a State contract;
- (i) Spouses and Partners of ICTs and Professionals.

Annex 6. Treatment of movement of natural persons under regional trade agreements

Although mode 4 under the GATS is limited to the temporary movement of natural persons with respect to the supply of services, when discussing regional trade agreements (RTAs), we use the broader term "labour mobility" because many agreements are broader in their coverage than GATS mode 4.

RTAs approach labour mobility in a wide variety of ways. Some agreements cover the mobility of people in general, including permanent migration and non-workers; others offer free movement of labour, including entry to the local labour market; some are limited to facilitated movement for certain kinds of trade- or investment-related activities; and still others are, like the GATS, confined to temporary movement and only for service suppliers (and explicitly exclude entry to the labour market or permanent migration). While some agreements cover workers at all skill levels, most are limited to higher skilled workers. Some agreements provide for broad labour mobility, but exclude some sectors, while others include all sectors, but limit mobility to certain defined groups.

An important factor in labour mobility is the extent to which countries are aiming at deep integration agreements, or at agreements more focused on opening or facilitating trade. The former tend to result in agreements with free labour mobility (or close to it), while the latter focus on provision of certain forms of mobility for some categories of persons related to trade. Within each of these forms, the agreements generally contain basic types of similar provisions, with differences reflecting the depth and extent of access granted, rather than fundamentally different approaches. Agreements often use each other, and the GATS, as a model for key provisions (e.g., related to exceptions).

Labour mobility under regional trade agreements can include categories of persons beyond GATS mode 4, or even by the broader definition used above. While some agreements only cover movement in relation to the services chapter and mode 4 (e.g., MERCOSUR), others no longer deal with mobility under the trade in services section, but group intra-corporate transferees, service suppliers, and investors together in a separate chapter on movement of natural persons more generally (e.g., Japan-Singapore). While still focused on trade-related movement, they are no longer limited simply to trade in services, but can include investors and businesspeople from other sectors (e.g., manufacturing). Other agreements devote a separate chapter to the temporary movement of all types of businesspeople (e.g., the Group of Three and some bilateral agreements in Latin America). Some agreements, while including mode 4 in the services chapter, will also include provisions in the investment chapter on companies' needs to bring in key personnel. For example, the ASEAN Investment Framework Agreement calls for the promotion of freer movement of skilled labour and professionals; the US-Jordan agreement includes visa commitments for investors; and the EU-Mexico agreement section on financial services includes provisions on the nationality of key personnel. Although these provisions may be more concerned with mode 3 (establishment), they illustrate the linkages between modes 3 and 4. Finally, some agreements provide for access to the home country labour market (EU, EFTA, EEA, Trans-Tasman Travel Arrangement).